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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,630	06/08/2007	Darren John Hotchkin	043153-9104-00	3309
23409 7590 12/16/2010 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER				
ADDIE, RAYMOND W				
ART UNIT		PAPER NUMBER		
3671				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/591,630

Applicant(s)

HOTCHKIN, DARREN JOHN

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-17, 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Bruyere et al. US 2004/0057791 A1 in view of Girotti US 5,046,884.

Bruyere et al. discloses a lightweight, portable, roadway barrier (1) comprising:

A body having a mass of less than 200Kg/m, preferably 100Kg/m.

Wherein the barrier (1) is made of steel and does not require additional mass to function as a barrier.

An impact resistant framework further comprising:

A plurality of upright members (11, 12, 13) disposed along the length of the barrier.

A pair of panels (6, 7) mounted to opposite sides of the barrier for deflecting vehicles on impact with the barrier. See Figs. 1-10; Para. [0013, 0041-0055].

Although Bruyere et al. clearly illustrates element (16) in Fig. 9, Bruyere et al. does not describe the feature in the specification. However, element (16) appears to be an opening or passageway. Further, Girotti teaches it is known to provide traffic barriers (4) with longitudinally extending members, such as rebar (12), connected to upright members (5, 7) disposed at the ends of the barrier (4). Thereby strengthening the barrier against impacts.

Although only one rebar (12) is illustrated in the Figs. Girotti clearly discloses multiple rebars (12) may be connected between the uprights (5, 7). See Col. 3, Ins. 1-3.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the traffic barrier of Bruyere et al. with a plurality of longitudinal strengthening members, as taught by Girotti et al., in order to prevent the barrier from collapsing during an impact.

With respect to claims 2, 4, 5 Bruyere et al. discloses the internal structural framework provides sufficient rigidity for resisting collapse of the barrier, in response to a vehicle impact. The side panels (5, 7) principally function to deflect a vehicle on impact.

Wherein the side panels (5, 7) do not make a substantial contribution to the rigidity of the barrier, such that the side panels do not send the damaged vehicle back into the lane of traffic. See Paragraph [0015].

With respect to claim 3 Bruyere et al. discloses essentially all that is claimed, to include a means for passing a longitudinal member through the intermediate upright members (12), but does not disclose the use of longitudinally extending reinforcing members. However, Girotti teaches it is known to provide traffic barriers (4) with longitudinally extending members, such as rebar (12), connected to upright members (5, 7) disposed at the ends of the barrier (4). Thereby strengthening the barrier against impacts. See Col. 3, Ins. 1-3. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the traffic barrier of Bruyere et al. with a

plurality of longitudinal strengthening members, as taught by Girotti et al., in order to prevent the barrier from collapsing during an impact.

With respect to claims 6, 7, 9-12 Bruyere et al. discloses the barriers are made of steel, weight 100 Kg/m and include side sections which are connected to the side panels (6, 7). See [0013, 0054] Further, at least one of said longitudinal members extends along the length of the barrier and is connected at opposite ends to the upright end members (25) and interior upright members (25, 46). Wherein the upright members (25) are formed of steel plate and comprise sections as at 53, 61) that are connected to said side panels (15). See Col. 4, Ins. 1-15.

With respect to claims 13-17 Bruyere et al. discloses a plurality of intermediate upright members (12) disposed between the upright end members (11, 13) and clearly illustrates in Figs. 1, 2 one of said upright members is midway between the ends. Also, Bruyere et al. clearly illustrates element (16) in Fig. 9, positioned near the top of the barrier. Although, Bruyere et al. does not describe the feature (16) in the specification. However, element (16) appears to be an opening or passageway.

Further, Girotti teaches it is known to provide traffic barriers (4) with longitudinally extending members (6, 7, 12) such as rebar and stirrups, connected to upright members (5, 7) disposed at the ends of the barrier (4). Thereby strengthening the barrier against impacts.

Although only one rebar (12) is illustrated in the Figs. Girotti clearly discloses

multiple rebars (12) may be connected between the uprights (5, 7). See Col. 3, Ins. 1-3.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the traffic barrier of Bruyere et al. with a plurality of longitudinal strengthening members, as taught by Girotti et al., in order to prevent the barrier from collapsing during an impact.

With respect to claims 19, 20 Bruyere et al. clearly illustrates each side panel (6, 7) comprise a series of lengthwise corrugations defining panel ribs. Wherein the side panels (6, 7), diverge outwardly from top to bottom, relative to each other, as viewed from the ends of the barrier. See Figs. 4, 6, 11; Paras. [0052].

With respect to claims 21-23 Bruyere et al. discloses lower side panels (6.2, 7.2) on each side of the barrier, that prevent vehicle tires from penetrating the barrier. See [0052]. And that the panels extend to a location vertically above the attachment means (4, 5). Although Bruyere does not form a recess in the top of the barrier, to do so is well within the skill of one in the art. Wherein Girotti teaches the use of pivotable connecting means (8, 18), that permits limited hinging movement between adjacent barriers (4). See Figs. 1, 2.

2. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bruyere et al. US 2004/0057791 A1 in view of Girotti US 5,046,884 as applied to claim 17 above, and further in view of Lohrman US 5,145,278. Bruyere et al. in view of Girotti disclose essentially all that is claimed, to include lifting the barrier with a crane, using

hydraulic grippers. But do not disclose providing the intermediate upright member(s) (12) with crane-hook receiving apertures. However, Lohrman teaches it is known to provide traffic barriers (10) with lift apertures (52) to receive a hoist hook from a crane for lifting the traffic barrier. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the traffic barrier of Bruyere et al. in view of Girotti with a lift aperture, as taught by Lohrman, in order to facilitate lifting and placing the barrier. See Figs. 1-6; Col. 7, Ins. 19-22.

Response to Arguments

3. Applicant's arguments filed 12/13/2010 have been fully considered but they are not persuasive. In response to applicant's argument that the primary reference does not disclose the use of reinforcement members, such as rebar and the like. And that Girotti provides reinforcement bars (12) to interconnect adjacent barriers together. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 7am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond W. Addie/
Primary Examiner, Art Unit 3671

12/14/2010